

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DEXTER LAWRENCE GRIFFIN,

Plaintiff,

v.

BRANDON PRICE,

Defendant.

Case No. 1:21-cv-01518-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITHOUT PREJUDICE,  
FOR FAILURE TO OBEY COURT ORDERS  
AND FAILURE TO PROSECUTE

(ECF Nos. 7, 10)

**FOURTEEN (14) DAY DEADLINE**

**I. Background**

Plaintiff Dexter Lawrence Griffin ("Plaintiff") is a civil detainee proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. Individuals detained pursuant to California Welfare and Institutions Code § 6600 *et seq.* are civil detainees and are not prisoners within the meaning of the Prison Litigation Reform Act. *Page v. Torrey*, 201 F.3d 1136, 1140. (9th Cir. 2000).

On October 18, 2021, the Court issued an order directing Plaintiff to submit a completed application to proceed *in forma pauperis* on the appropriate form for non-prisoners or pay the \$402.00 filing fee to proceed with this action. (ECF No. 7.) The Court expressly warned Plaintiff that failure to comply with the Court's order would result in dismissal of this action. (*Id.* at 2.)

The Court granted an extension of time for Plaintiff to file his application or pay the filing fee on November 3, 2021. (ECF No. 10.) The Court again expressly warned Plaintiff that failure to comply with the Court's order would result in a recommendation to dismiss this action for failure to obey a court order and failure to prosecute. (*Id.* at 2.) The extended deadline has expired, and Plaintiff has failed to respond to the Court's orders or otherwise communicate with the Court.

## **II. Failure to Prosecute and Failure to Obey a Court Order**

### **A. Legal Standard**

Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to comply with court order).

In determining whether to dismiss an action, the Court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

### **B. Discussion**

Here, Plaintiff's application to proceed *in forma pauperis* or payment of the filing fee is overdue and he has failed to comply with the Court's orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first

1 and second factors weigh in favor of dismissal.

2 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
3 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
4 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
5 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d  
6 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
7 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
8 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*  
9 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

10 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
11 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;  
12 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s October 18, 2021 and  
13 November 3, 2021 orders expressly warned Plaintiff that his failure to comply with the Court’s  
14 order would result in dismissal of this action. (ECF Nos. 7, 10.) Thus, Plaintiff had adequate  
15 warning that dismissal could result from his noncompliance.

16 Additionally, at this stage in the proceedings there is little available to the Court that  
17 would constitute a satisfactory lesser sanction while protecting the Court from further  
18 unnecessary expenditure of its scarce resources. Plaintiff has not paid the filing fee, or would be  
19 proceeding *in forma pauperis* in this action, apparently making monetary sanctions of little use,  
20 and the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has  
21 ceased litigating his case.

### 22 **III. Conclusion and Recommendation**

23 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
24 district judge to this action.

25 Further, the Court finds that dismissal is the appropriate sanction and HEREBY  
26 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court  
27 order and for Plaintiff’s failure to prosecute this action.

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